

Michigan Supreme Court
State Court Administrative Office
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John D. Ferry, Jr., State Court Administrator

M E M O R A N D U M

DATE: January 16, 2002

TO: All Circuit, Family Division, District, and Municipal Judges
cc: Court Administrators, County Clerks, and Juvenile Registers

FROM: James L. Covault, Director
Trial Court Services

SUBJ: Implementation of SCAO Administrative Memorandum 2001-10
Public Acts 84-91 - DNA Sampling and Assessment

Public Acts 84 through 91 of 2001 expand the offenses for which a DNA sample is required upon conviction or a finding of responsibility. The acts took effect January 1, 2002, and apply to the following individuals:

- Those individuals convicted on or after January 1, 2002, of a felony or one of a select set of misdemeanors;
- Those juveniles found responsible on or after January 1, 2002, of one of a select set of offenses;
- Those in prison on or after January 1, 2002, based on a conviction of a felony or one of a select set of misdemeanors;
- Those juveniles who are supervised by either the Family Independence Agency (FIA) or a county juvenile agency on or after January 1, 2002, and who are under such supervision based on being either (1) found responsible of one of a number of offenses, or (2) convicted of a felony or one of a number of misdemeanors [Currently, Wayne County's Department of Community Justice (DCJ) is the only county juvenile agency];
- Those juveniles who are public wards (juveniles committed to FIA or DCJ through 1974 Public Act 150) on or after January 1, 2002, and who are public wards based on being either (1) found responsible for one of a select set of offenses, or (2) convicted of a felony or one of a number of misdemeanors.

A. Requirement to Take DNA Sample

A DNA sample is now required to be taken in a significantly greater number of situations. (See attached list of Eligible Offenses for DNA Profiling Assessment.) However, a sample is not to be taken from an individual if a sample was at any time earlier taken from the individual and is in the possession of the relevant authorities. [MCL 28.173a(2), 28.176(3), 712A.18k(2), 750.520m(2), 791.233d(1), 803.225a(2), 803.307a(2)]

1. Persons convicted or found responsible of an offense on or after January 1, 2002

For relevant convictions and findings of responsibility, a court must order that a DNA sample be taken. [MCL 28.176(4)] General facts about ordering DNA samples:

- The criminal history record available from the Michigan State Police Criminal Justice Information Center will indicate whether or not a DNA sample is already on file. At the present time, the Michigan State Police predict it will take two to three months before the criminal history record for an individual will show that a DNA sample has been taken. Courts and local law enforcement may need to develop a protocol for validating a defendant or juvenile's statement that a DNA sample was taken. Absent any proof, the court must comply with the statute and order the sheriff or investigating law enforcement agency to take the sample. (A Sample Criminal History Record Containing DNA Record Information is attached.)
- A new form, MC 283, Order for DNA Sample, has been created. It includes a section for law enforcement to indicate the sample was taken, with direction to return the form to the court upon completion if requested. The date the sample was taken will indicate to the court whether the sample was taken before or after the court's order. The form is available at the following location:
<http://www.supremecourt.state.mi.us/courtforms/generalcriminal/mc283.pdf>
- Compliance with the order to provide a DNA sample may be a condition of a bond pending sentencing.
- The requirement to order persons for counseling and/or testing for communicable disease has not been replaced by DNA sampling.

a. Persons convicted

A DNA sample is required for any person convicted on or after January 1, 2002, of any felony or of any one of a set of eight particular misdemeanors. [MCL 750.520m(1)(b)]

General points about this requirement:

- This requirement applies equally to those juveniles who are either waived into the criminal division of the Circuit Court or who are designated to be tried as an adult in the family division of the Circuit Court.
- Felony is defined as a violation of a penal law of this state for which the offender may be punished by imprisonment for more than one year, or an offense expressly designated by law to be a felony. [MCL 712A.18k(11)(b), 803.225a(7)(a), 750.520 m(11)(c), 28.172(d), 803.307a(7)(a)]

b. Juveniles found responsible

A DNA sample is required for any juvenile found responsible on or after January 1, 2002, for any one of a set of fourteen particular offenses. [MCL 712A.18k(1)(a)]

2. Persons in custody on or after January 1, 2002

DNA samples are required for all individuals who are prisoners, and for juveniles who are supervised by FIA/DCJ or are public wards based on being found responsible or convicted of any one of a set of particular offenses, on or after January 1, 2002. The agency taking the sample shall collect a sample regardless of whether the individual consents to the collection. [MCL 791.223d(3), 803.225a(4), 803.307a(4)]

a. Department of Corrections (DOC) Prisoners

A prisoner shall not be released on parole, placed in a community placement facility, including a community corrections center or a community residential home, or discharged upon completion of his or her maximum sentence until a DNA sample is provided. A prisoner is a person who is incarcerated in a prison; a sample is not required for an individual who, prior to January 1, 2002, was placed on parole or otherwise released from prison and remains out of prison. [MCL 791.233d(1)]

b. Juveniles under the supervision of FIA or DCJ

A juvenile who, on or after January 1, 2002, is under the supervision of the FIA or DCJ, and is under such supervision based on having been (1) found responsible for any one of fourteen particular offenses, or (2) convicted of a felony or any one of eight particular misdemeanors, shall not be placed in a community placement of any kind and shall not be discharged from wardship until a DNA sample is provided. [MCL 803.225a(1)] A

sample would not have to be taken for a juvenile who is supervised by FIA/DCJ if the current supervision is based on an adjudication or conviction for an offense not triggering a DNA sample, even if the juvenile had an earlier adjudication or conviction for an offense which now would trigger a DNA sample.

c. Public wards

A juvenile who, on or after January 1, 2002, is a public ward under a youth agency's jurisdiction, and is a public ward based on having been (1) found responsible for any one of fourteen particular offenses, or (2) convicted of a felony or any one of eight particular misdemeanors, may not be placed in a community placement of any kind or discharged from wardship until a DNA sample is provided. [MCL 803.307a(1)] Relevant points:

- A public ward is either:
 - a) a youth accepted for care by a youth agency who is at least 12 years of age when committed to the youth agency by the juvenile division of the probate court or the family division of circuit court under MCL 712A.2 and the act for which the youth is committed occurred before his or her seventeenth birthday, or
 - b) a youth accepted for care by a youth agency who is at least 14 years of age when committed to the youth agency by a court of general criminal jurisdiction under MCL 769.1 if the act for which the youth is committed occurred before his or her seventeenth birthday. [MCL 803.302]
- A youth agency is either FIA or a county juvenile agency, whichever has responsibility over a public ward. [MCL 803.302]
- As with juveniles under the supervision of FIA/DCJ, a sample would not have to be taken for a public ward if the wardship is based on an adjudication or conviction for an offense not triggering a DNA sample, even if the juvenile had an earlier adjudication or conviction for an offense which now would trigger a DNA sample.

B. Agency to Take DNA Sample

1. Persons convicted or found responsible for an offense on or after January 1, 2002

Samples must be collected after conviction or a finding of responsibility but before sentencing or disposition. [MCL 28.176(4)]

a. Persons convicted

For adults, and juveniles convicted through waiver, the court shall order the county sheriff or the investigating law enforcement agency to take the DNA sample. For juveniles convicted through designated proceedings, the court shall order only the investigating law enforcement agency to take the sample. [MCL 712A.18k(3)] Investigating law enforcement agency means the law enforcement agency responsible for the investigation of the offense for which the person is convicted, but does not include a probation officer employed by the DOC. [MCL 28.172(e), 750.520m(11)(b), 712A.18k(11)(c)]

b. Juveniles found responsible

In the relevant juvenile delinquency adjudications, the court is to order the investigating law enforcement agency to take the DNA sample. [MCL 712A.18k(1)(a)] The court is not to order the county sheriff to take the sample if the sheriff was not responsible for the investigation of the offense. [MCL 712A.18k(3)]

2. Persons in custody on or after January 1, 2002

The agency taking the sample of a person in prison, or of a juvenile who is supervised by FIA/DCJ or is a public ward, is neither required to give the prisoner or juvenile an opportunity for a hearing nor required to obtain a court order before collecting the sample. [MCL 791.233d(3), 803.225a(4), 803.307a(4)] Samples taken shall be mailed to the Forensic Science Division in the self-addressed envelope contained in the sampling kit.

a. DOC prisoners

For any individual in prison on or after January 1, 2002, the DOC shall take a DNA sample prior to either releasing the individual on parole, placing the individual in a community placement facility of any kind, or discharging the individual upon completion of his or her maximum sentence. [MCL 791.223d(1)]

b. Juveniles supervised by FIA/DCJ and public wards

For any juvenile supervised by FIA/DCJ and public ward in wardship based on being found responsible for the relevant offenses, or based on being convicted of a felony or one of the relevant misdemeanors, FIA or DCJ (whichever applies) shall take a DNA sample prior either to placing the individual in a community placement of any kind or to discharging the individual from wardship. [MCL 803.225a(1), 803.307a(1)]

C. Assessment for Taking DNA Sample

Any individual providing a DNA sample must pay a DNA assessment. If a sample already exists for an individual which meets the requirements of the DNA identification profiling system act, the person is not required to give a new sample or pay a new assessment. [*MCL 28.173a(2), 28.176(3), 712A.18k(2), 750.520m(2), 791.232d(1), 803.225a(2), 803.307a(2)*]

1. Persons convicted or found responsible for an offense on or after January 1, 2002

a. Ordering the DNA Assessment

Upon relevant conviction or finding of responsibility, the court must order each defendant or respondent to pay a \$60.00 DNA assessment. General points:

- The order for DNA assessment shall be ordered upon the record and shall be listed separately in the adjudication order, judgment of sentence, or order of probation. [*MCL 28.176(6), 712A.18k(5), 750.520m(7)*]
- The DNA assessment is in addition to any fines, costs, or other assessments, including the \$150 Forensic Laboratory Fee assessed in some convictions.

b. Collecting the DNA Assessment

The court shall collect the DNA assessment, along with fines, costs, and other assessments, from the individual. Special points:

- If the DNA assessment was ordered and the court later determines a sample was not required, a corrected judgment should be entered with appropriate notes on the Register of Action. Any amount collected should be applied to any outstanding balance, or returned to the payor if the case is paid in full.
- When a court accepts from defendants and respondents partial payment of an individual's entire outstanding debt, receipts are applied against the DNA assessment only after many other debts have been covered. [*MCL 775.22*] Here is the priority of payments:

1. Fifty percent of each payment for crime victim assessment and restitution until paid in full.

2. Costs. (MCL 600.8381 requires the district and municipal courts to send the first \$9 of costs to the state. For ordinance violations, costs and fines are combined.)
3. Fines.
4. Probation or parole supervision fees.
5. Assessments and other payments. (The DNA assessment falls into this category.)

- The court may suspend payment of all or part of the assessment under review of a verified petition if it determines the person is unable to pay the assessment. [MCL 28.176(7), 712A.18k(6), 750.520m(8)]

2. Persons in custody on or after January 1, 2002

A prisoner, or a relevant juvenile who is under FIA/DCJ supervision or is a public ward, shall pay a DNA assessment of \$60.00. No court order is required to establish liability for the assessment. [MCL 791.223d(4), 803.225a(6), 803.307a(6)]

D. Distribution of the Collected DNA Assessment

The entity collecting the DNA assessment shall distribute the collected monies as prescribed by law. Distribution of the DNA assessment should not be combined with the distribution of any other assessment (e.g., the Forensic Laboratory Fee), because the distribution varies with different assessments.

1. Persons convicted or found responsible for an offense on or after January 1, 2002

Distribution of all or any portion of the DNA assessment ordered and collected by the court is as follows:

- | | |
|-----|---|
| 10% | to the court's funding unit, |
| 25% | to the funding unit of the agency which collected the DNA sample, and |
| 65% | to the Department of Treasury for the State Police Forensic Science Division. |
- [MCL 28.176(8), 712A.18k(7), 750.520m(9)]

Specific points in distributing monies to the Department of Treasury:

- The Department of Treasury court transmittal advice forms, Form 57 for Circuit and Probate Courts and Form 295 for District and Municipal Courts, have been modified to transmit revenue due the State Police. The 65 percent allocated for the MSP Forensic Science Division shall be deposited in account 228.55.

- If the agency which collected the sample was the Michigan State Police, the 25 percent funding unit allocation shall also be deposited to account 228.55.

2. Persons in custody on or after January 1, 2002

The agency collecting the assessment shall transmit the entire \$60.00 DNA assessment or portion of the assessment collected to the Department of Treasury for the State Police Forensic Science Division. [MCL 791.223d(4), 803.225a(6), 803.307a(6)]

E. General Issues

1. Resisting or refusing to provide sample

Resisting or refusing to provide a DNA sample is a crime. The following penalties apply:

- If a person convicted as an adult resists or refuses to provide a sample, he or she may be sentenced to misdemeanor penalties of 1 year imprisonment and/or \$1,000 fine. These penalties apply to juveniles sentenced as adults after being convicted following waiver to the criminal division of the Circuit Court or being designated to be tried as an adult in the family division of the Circuit Court. [MCL 28.173a(1)]
- If a juvenile is found responsible for having resisted or refused to provide a DNA sample, the juvenile is open to the dispositional options available under the Juvenile Code. [MCL 712A.18]

2. DNA sample assessment not reported as part of fine on alcohol sentencing abstract

The DNA sample assessment is not reported on the alcohol sentencing abstract (alcohol audit) at the present time. If this is added to the definition for the Drunk Driving Audit, courts will be notified.

3. Sampling kit and training

Questions regarding obtaining DNA sample kits, or training on taking samples, should be referred to the Forensic Science Division, Michigan State Police, 7320 N. Canal Road, Lansing, MI 48903, (517) 322-6600.

For further information regarding assessment distribution, contact Rebecca Mack at (517)373-5596. For information regarding applicable offenses or other implementation issues, contact Sandi Hartnell at (517) 373-0122.

Eligible Offenses for DNA Profiling Assessment

Public Acts 84 - 91 of 2001

Effective January 1, 2002

Juvenile found responsible in the Family Division for one of the following:

750.83 Assault with intent to commit murder
750.91 Attempt to murder
750.316 First degree murder
750.317 Second degree murder
750.321 Manslaughter
750.349 (or attempt) Kidnapping
750.520b (or attempt) CSC 1st
750.520c (or attempt) CSC 2nd
750.520d (or attempt) CSC 3rd
750.520e (or attempt) CSC 4th
750.520g (or attempt) Assault with intent to commit CSC
750.167(1)(c) (or corresponding ordinance) Window peeping
750.167(1)(f) (or corresponding ordinance) Indecent or obscene public behavior
750.335a (or corresponding ordinance) Indecent exposure

Anyone convicted for one of the following, including a designated juvenile or if jurisdiction is waived to circuit court:

Any felony (or attempt)
750.145a (or corresponding ordinance) Enticing a child for immoral purposes
750.167(1)(c) (or corresponding ordinance) Window peeping
750.167(1)(f) (or corresponding ordinance) Indecent or obscene public behavior
750.167(1)(i) (or corresponding ordinance) Loitering in a house of prostitution
750.335a (or corresponding ordinance) Indecent exposure
750.451 (or corresponding ordinance) First and second prostitution violations
750.454 (or corresponding ordinance) Leasing a house for purposes of prostitution
750.462 (or corresponding ordinance) Female under 17 in a house of prostitution

Sample Criminal History Record Containing DNA Record Information

A TEST 68 7 11/06/01 1022 CRD21.

MI3300671

PUR: C RESPONSE TO INQUIRY ON SID: 497J

OPR: WORDEN

FOR: TEST /DNA

OCA: FLAG

THIS IS A TEST RECORD ON THE CRIMINAL HISTORY RECORD SYSTEM

NAM: DOE/HERMAN/DAVID/

SID: 497J

RAC: W SEX: M DOB: 07-04-1930 FBI:

HGT: 509 WGT: 150 HAI: BRO III: UNKNOWN

EYE: BLU POB: MI

DLN: MI/D666666888999

NCIC FINGERPRINT CLASSIFICATION

MNU:

FPC:

PRN: 998877

SOC: 666-44-3333

AFIS PRINTS AVAILABLE: YES

PALM PRINTS AVAILABLE: NO

DNA RECORD AVAILABLE: YES (PHONE 517-322-6600)

SCAR/MARK/TATTOO: SC LF ARM TAT R ARM SC L ANKL

SC FACE CRIP R FT

ADDITIONAL IDENTIFIERS AND COMMENTS:

FIREARMS RIGHTS RESTORATION: APPROVED ORI: MI3301100 DATE: 05-06-1993

NAM: DOE/JOHN//

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